

**THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF NORTH CAROLINA  
EASTERN DIVISION**

NO. 4:07-CV-57-H(3)

EASTERN AVIATION FUELS, INC., )  
d/b/a EASTERN RACE FUELS, )  
 )  
Plaintiff, )  
 )  
vs. )  
 )  
TORCO RACING FUELS, INC., d/b/a )  
TORCO RACE FUELS, *et al.*, )  
 )  
Defendants. )  
\_\_\_\_\_ )

**MEMORANDUM &  
RECOMMENDATION**

This cause comes before the Court upon Plaintiff's motion to strike the Answer and Counterclaim filed by Defendants Torco Racing Fuels, Inc. and Knoll Gas Motor Sports, Inc. ("corporate defendants") and to enter a default judgment against the corporate defendants [DE-34]. The corporate defendants have not responded to this motion, and the time for doing so has expired. Accordingly, the matter is now ripe for adjudication.

Plaintiff filed its Complaint on April 19, 2007 [DE-1]. Defendants failed to file an entry of appearance, Answer, motion or other responsive pleading to the Complaint in a timely manner [DE-9]. Therefore, a default was entered by the Clerk of Court on May 24, 2007 against each Defendant pursuant to Rule 55(a) of the Federal Rules of Civil Procedure [DE-9]. However, Defendants filed an unopposed motion to set aside entry of default and for an extension of time to answer Plaintiff's Complaint on July 12, 2007 [DE-11]. That motion was granted on July 13, 2007, and Defendants

were given until August 3, 2007 to respond to Plaintiff's Complaint [DE-12]. Defendants filed a Answer and Counterclaim on August 3, 2007 [DE-13]. An amended Answer and Counterclaim was filed by Defendants with leave of court on August 20, 2007 [DE's 17-19]. On May 21, 2008 Johnny M. Loper, Christopher W. Jones, and the law firm of Womble Carlyle Sandridge & Rice, PLLC filed a motion to withdraw as counsel for Defendants [DE-30]. The Clerk of Court granted this motion on May 22, 2008 [DE-31]. In the order granting this withdrawal, it was specifically noted that all corporate Defendants had 14 days from the date of the order to retain new counsel [DE-31]. Any new counsel was specifically instructed to enter a notice of appearance with this Court [DE-31]. As of the date of the instant Memorandum and Recommendation, no counsel has entered a notice of appearance on behalf of the corporate defendants. Moreover, the corporate defendants have failed to respond to any motion filed by Plaintiffs since May 22, 2008, including the instant motion to strike answer and enter default [DE's 33-36].

In support of this motion, Plaintiff argues that it has "been in contact with . . . persons closely related with the corporate defendants, and believes that the corporate defendants are dissipating the assets of the corporations, and driving themselves to bankruptcy" [DE-34. Pg. 3]. Moreover, Plaintiff notes that the corporate defendants had previously defaulted, and further contends that "it was only through the efforts of their counsel that this case has continued . . . [t]he withdrawal of counsel has returned the *status quo* of the defendants to their usual inaction, and now threatens plaintiff's recovery herein." *Id.* By failing to respond, the corporate defendants have waived any objections to Plaintiff's assertions.

Furthermore, a corporation is not permitted to proceed *pro se*. See Rowland v. California Men's Colony, Unit II Men's Advisory Counsel, 506 U.S. 194, 217 (1993)(corporation may appear in federal court only through licensed counsel)(dissenting opinion); Baker v. Data Dynamics, 561

F. Supp. 1161, 1165 (W.D. N.C. 1983); Local Civil Rule 83.1(d). This Court has previously deemed it appropriate to strike documents filed on behalf of a corporation attempting to proceed *pro se*.

Microsoft Corp. v. Computer Serv. & Repair, Inc., 312 F.Supp. 2d 779, 783 (E.D.N.C. 2004).

For these reasons, the undersigned HEREBY RECOMMENDS that the instant motion [DE-34] be GRANTED. Specifically, it is RECOMMENDED that the Answer and Counterclaim filed by Defendants Torco Racing Fuels, Inc. and Knoll Gas Motor Sports, Inc. be stricken. It is further RECOMMENDED that the Clerk of Court be directed to enter default against Defendants Torco Racing Fuels, Inc. and Knoll Gas Motor Sports, Inc. This recommendation does not apply to Defendant Evan Knoll.

SO RECOMMENDED in Chambers at Raleigh, North Carolina this 23<sup>rd</sup> day of July, 2008.

A handwritten signature in black ink, appearing to read "William A. Webb", is written over a horizontal line.

William A. Webb  
U.S. Magistrate Judge